

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYMOND M. MARTIN,

Defendant.

Case No. 09-cr-40037-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Raymond M. Martin's motion to void the judgment in this case for lack of subject matter jurisdiction (Doc. 230). The Court believes that, although he did not cite it in his motion, Martin intends to invoke 28 U.S.C. § 2255 because, outside of his direct appeal in which he has not raised the jurisdictional argument, the relief he seeks is only available through such a motion. However, the Court is hesitant to construe this as a § 2255 motion without a clear indication that Martin intends to invoke § 2255. "[T]he court cannot so recharacterize a pro se litigant's motion as the litigant's first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law's 'second or successive' restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing." *Castro v. United States*, 540 U.S. 375, 377 (2003).

The Court **WARNS** Martin that if he does not file a motion to withdraw his pending motion on or before July 13, 2012, the Court will construe it as a § 2255 motion and Martin will then be subject to the second or successive filing requirements contained in 28 U.S.C. § 2255, ¶ 8.

IT IS SO ORDERED.

DATED: June 28, 2012

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE